

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SAN JOSE IMMEDIATE

C O N F I D E N T I A L STATE 052873

EXDIS

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: COSTA RICAN EXTRADITION BILL

REF: SAN JOSE 1028 AND PREVIOUS

1. SUMMARY. IN ADDITION TO CONCERNS ALREADY EXPRESSED BY EMBASSY WE BELIEVE IT SHOULD BE POINTED OUT AT HIGHEST LEVEL THAT EXTRADITION BILL IN A NUMBER OF RESPECTS VARIES SUBSTANTIALLY FROM NORMAL EXTRADITION PRACTICE AND PROCEDURE AND AT THE SAME TIME CAN BE SHOWN TO BE TAILORED TO VESCO'S SITUATION. IN ADDITION, SOME SUCH PROVISIONS RUN CONTRARY TO MAJOR INTERNATIONAL INITIATIVES IN THE NARCOTICS AND HIJACKING AREAS.

2. REVIEW OF EXTRADITION BILL AS SUMMARIZED IN SAN JOSE 1002 HAS IDENTIFIED THE FOLLOWING PROVISIONS WHICH ARE SUBSTANTIAL DEPARTURES FROM NORMAL EXTRADITION PRACTICE AND PROCEDURE AND ALSO ARE TAILORED TO VESCO'S SITUATION. THESE FACTORS WILL PROVIDE CONCRETE BASIS FOR CRITICIZING COSTA RICA AS PROVIDING SPECIAL PROTECTION TO VESCO. IF THIS BILL BECOMES LAW, DEPENDING UPON WHETHER THE EXISTING OR NEW TREATY PROVIDES A BASIS FOR EXTRADITION NOTWITH-
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STANDING THE PRO-VESCO PROVISIONS, ANY U.S. ATTEMPT TO

EXTRADITE VESCO WILL EITHER BE COMPLICATED OR FRUSTRATED. FINALLY, SOME OF THESE PROVISIONS RUN CONTRARY TO MAJOR INTERNATIONAL EFFORTS TO CONTROL DRUG TRAFFICKING AND

AIRCRAFT HIJACKING AND COULD PREJUDICE COSTA RICA'S REPUTATION IN THESE RESPECTS ALSO. WE BELIEVE THAT THESE PROVISIONS AND THEIR CONSEQUENCES AS DESCRIBED BELOW SHOULD BE BROUGHT TO THE ATTENTION OF COSTA RICAN AUTHORITIES AT THE HIGHEST LEVEL.

3. ARTICLE 2 CLAUSE 1 OF THE BILL, WHICH PROHIBITS EXTRADITION OF PERSONS QTE SUBJECT TO RIGHTS RESERVED FOR NATIONALS UNDER THE CONSTITUTION OR SPECIAL LAWS UNQTE IS A UNIQUE PROVISION IN INTERNATIONAL EXTRADITION PRACTICE AND PROCEDURE. WHILE IT IS NOT UNCOMMON TO PROHIBIT EXTRADITION OF ONES OWN NATIONALS AND OCCASIONALLY PERMANENT RESIDENTS THIS PROVISION WHICH PERMITS COSTA RICA TO ENACT SPECIAL LAWS FOR ANYONE IT WISHES TO INSULATE FROM EXTRADITION IS BOTH NOVEL AND OBVIOUSLY CALCULATED FOR THE BENEFIT OF ROBERT VESCO, WHO ALREADY HAS A SPECIAL COSTA RICAN PASSPORT.

4. ARTICLE 2 CLAUSE 6, WHICH PRECLUDES EXTRADITION WHEN THE CRIME HAS NOT BEEN EXECUTED IN THE TERRITORY OF THE REQUESTING STATE OR WHEN THE REQUESTED INDIVIDUAL WAS NOT IN THAT STATE'S TERRITORY WHEN THE CRIME WAS COMMITTED, IS ANALOGOUS TO PROVISIONS IN OLDER EXTRADITION TREATIES WHICH REQUIRE THAT THE CRIME HAVE BEEN COMMITTED IN THE TERRITORY OF THE REQUESTING STATE; HOWEVER, MODERN TREATIES UNIFORMLY PROVIDE FOR EXTRADITION OF OFFENDERS WITHOUT REGARD TO TERRITORIAL RESTRICTIONS IF THE OFFENSE IN SIMILAR CIRCUMSTANCES WOULD BE PUNISHABLE IN THE REQUESTED STATE. AGAIN THIS PROVISION IS DEMONSTRABLY TAILORED TO THE VESCO SITUATION OF BEING BASED IN NASSAU AND USING INTERNATIONAL TELECOMMUNICATIONS FACILITIES TO COMMIT OFFENSES. IN ADDITION, THIS PROVISION PARTICULARLY WOULD BE A MAJOR IMPEDIMENT TO EXTRADITION OF MAJOR INTERNATIONAL NARCOTICS TRAFFICKERS WHO HABITUALLY AVOID ENTERING THE TERRITORY OF THE STATE INTO WHICH THE DANGEROUS
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DRUGS THEY CONTROL ARE DIRECTED. AUGUST RICORD RECENTLY EXTRADITED FROM PARAGUAY IS AN EXAMPLE OF SUCH AN INDIVIDUAL. INTERNATIONAL CONCERN WITH PROSECUTING SUCH CONSPIRACIES AND FACILITATING EXTRADITION IS EXPRESSED BOTH IN SINGLE CONVENTION ON NARCOTIC DRUGS OF 1961, TO WHICH COSTA RICA IS PARTY, AND 1972 PROTOCOL AMENDING SINGLE CONVENTION, WHICH COSTA RICA HAS RATIFIED. THE PENAL PROVISIONS OF ARTICLE 36 OF THE SINGLE CONVENTION

AND THAT ARTICLE AS AMENDED BY PROTOCOL PROVIDE FOR PUNISHMENT OF CONSPIRACIES TO COMMIT NARCOTICS OFFENSES. FINALLY, THIS CLAUSE WOULD IMPAIR OPERATION OF THE

HAGUE AND MONTREAL CONVENTIONS DIRECTED AGAINST HIJACKING AND OTHER ATTACKS ON AIRCRAFT AND OF U.N. CONVENTION ON CRIMES AGAINST DIPLOMATS WHICH PROVIDE FOR EXTRADITION TO CONTRACTING PARTIES EVEN WHERE THE OFFENSE IS NOT COMMITTED IN TERRITORY OF REQUESTING STATE.

5. ARTICLE 2, CLAUSE 8, WHICH PROHIBITS EXTRADITION FOR COMMON OFFENSE QTE IF IT HAS IMPLICIT POLITICAL MOTIVATION UNQTE IS RADICAL EXPANSION OF POLITICAL OFFENSE CONCEPT IN INTERNATIONAL EXTRADITION PRACTICE AND WOULD SERIOUSLY INTERFERE WITH EFFORTS TO DEAL WITH TERRORISTS, INCLUDING HIJACKERS AND PERPETRATORS OF CRIMES AGAINST DIPLOMATS. THIS SPECIAL PROVISION HAS NO APPLICATION TO SECURITIES CHARGES AGAINST VESCO AND RELATED FRAUDS. IN THE CONTEXT OF THE ILLEGAL CAMPAIGN CONTRIBUTIONS OF WHICH VESCO IS ACCUSED, HOWEVER, HE MIGHT CLAIM BENEFITS OF SUCH A PROVISION. THE HAGUE AND MONTREAL CONVENTIONS AND THE RECENT U.N. CONVENTION ON CRIMES AGAINST DIPLOMATS PROVIDE FOR PROSECUTION OF THESE OFFENDERS WITHOUT EXCEPTION AND QTE IN THE SAME MANNER AS IN THE CASE OF ANY ORDINARY OFFENSE OF A SERIOUS NATURE UNQTE.

6. ARTICLE 2, UNNUMBERED CLAUSE PRECLUDES EXTRADITION OF A PERSON WHO IN PUBLIC AND NOTORIOUS FORM IS QTE THE VICTIM OF PERSECUTION FOR POLITICAL MOTIVES UNQTE. THIS PROVISION, WHILE NOT FACTUALLY APPLICABLE TO VESCO, WOULD BE SEEN AS INTENDED TO BENEFIT HIM BECAUSE HE HAS ATTEMPTED TO ESTABLISH THAT THIS IS HIS SITUATION THROUGH COSTA RICAN MEDIA.
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7. ARTICLE 4 SETS NORMS WHICH PRECLUDE THE REQUESTING STATE FROM INVOKING DEEDS CONTEMPLATED IN AN EARLIER REQUEST FOR EXTRADITION OR CONNECTED OR RELATED WITH SUCH DEEDS, AND DEEDS COMMITTED PRIOR TO AN EARLIER REQUEST FOR EXTRADITION. SUCH EXPLICIT PRECLUSION IS UNPRECEDENTED IN INTERNATIONAL EXTRADITION PRACTICE AND AGAIN DEMONSTRABLY TIED TO VESCO SINCE PREVIOUS EXTRADITION REQUESTS WERE BASED ON OFFENSES PERIPHERAL TO HIS CENTRAL SECURITIES FRAUDS.

8. WE ARE HOPEFUL THAT ABOVE SPECIAL APPROACH WILL NOT ONLY GIVE PAUSE TO COSTA RICAN AUTHORITIES AS TO VESCO MATTERS BUT WILL FLAG EXPRESSED CONCERNS OF PRESIDENT IN OFFICE AND PRESIDENT-ELECT IN HIJACKING

AND NARCOTICS AREAS. KISSINGER

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